Manitoba Hydro

from the Office of the Vice-President

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2011 04 28

Chairman Mark Honadel
Assembly Energy and Utilities Committee
Room 113 West
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Chairman Honadel:

RE: ASSEMBLY BILL 114

I write with respect to the above-noted Bill which is scheduled for hearing before your Energy and Utilities Committee on May 3, 2011.

As you may be aware, Manitoba Hydro has enjoyed a positive and longstanding clean energy trading relationship with Wisconsin for many years, and in furtherance of that relationship, Manitoba Hydro and Wisconsin Public Service Corporation signed a term sheet to expand their clean energy trade in 2008. This term sheet is based on the construction of new generating stations in Manitoba and new transmission assets in both Manitoba and the U.S. Through this arrangement, Manitoba Hydro would provide Wisconsin with increased supplies of clean, renewable, reliable and competitively priced power complementing the existing suite of resources presently available in Wisconsin.

In order to help bring this matter to fruition and enhance our common interests, we understand that Assembly Bill 114 would seek to eliminate the present renewable portfolio standard cap for large hydroelectric development which is presently set at 60 MW. This cap would be eliminated for all new hydro-electric resources coming into service after December 31, 2010.

Manitoba Hydro fully supports any initiative to recognize hydro-electric energy of any size as a clean and renewable form of energy as approximately 95% of Manitoba Hydro's energy production is hydro-electric energy from plant placed in service prior to the date specified in this Bill. We would however suggest that your committee may wish to consider the efficacy of such a cut-off date in that, whether plant was placed in service before or after the December 31, 2010 date, the character of the energy as clean and renewable does not change.

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A more troubling aspect of Assembly Bill 114 is wording in Section 5 of the Bill, referring to licensing of Manitoba Hydro projects within the province of Manitoba. This particular paragraph of the legislation singles out Manitoba Hydro for special attention which may be seen as discriminatory, in contrast with any other utility in North America. It implies that the licenses under which the projects known as Churchill River Diversion and Lake Winnipeg Regulation (which are not generation plants but rather water management projects) currently operate are not fully effective under Canadian law. This is simply untrue. It further requires the Government of Manitoba to take certain actions within a set time frame in order to have hydro-electric resources qualify at all for renewable status

Briefly, water power projects in Manitoba are licensed pursuant to a Manitoba statute, *The Water Power Act* and its accompanying Regulation (The Water Power Regulation). The statutory scheme provides that projects are initially licensed under what are referred to as interim licenses which allow for the planning, development and operation of a project. A final license can be issued at any time after the project has been completed, commissioned and final drawings and financial accountings provided to the Manitoba government department responsible for licensing (the Department of Water Stewardship). There is no time constraint imposed on a licensee to apply for a final license and no penalty or sanction if no application is made for a final license. It should be noted that Manitoba Hydro has made application for final licenses for both of the specified projects.

In passing, it seems somewhat unusual to us that the government of a province in a foreign country would be required to carry out its certain processes, make decisions and inform a regulatory agency in a foreign jurisdiction that it has properly responded to our request for a final license within a timeframe set out by that other jurisdiction and further that this foreign province would be required to certify such licenses are "in effect under Canadian law". Such requirement would suggest that, notwithstanding a presentation of a final license by the Province of Manitoba and an assertion or certification that such final license is "in effect under Canadian law," your commission may be forced to adjudicate the question of whether or not those licenses are in fact properly issued "in effect under Canadian law".

You will also be aware that issues of a similar nature have arisen in your neighbouring jurisdiction of Minnesota, and that legislators and courts in Minnesota have come to the conclusion that licensing matters and any issues associated therewith should remain solely within the purview of Canadian courts and legislative bodies.

One of the hallmarks of resource use allocations, licensing approvals and indeed major resource development project approvals in Canada is a requirement to consult with aboriginal peoples to determine the impact of government decisions in that regard on treaty and aboriginal rights. The final license processes for Lake Winnipeg Regulation and Churchill River Diversion contain such consultation processes. The nature of these processes is that they are open ended and the nature and scope of the consultation are determined by the Government and the aboriginal entity involved. There are no hard time constraints for the conclusion of consultation. As with any governmental decision making process, there will be those who will be unhappy with the outcome

of the process, there will be those who may be dissatisfied with the process itself and further there are those who may suggest that they ought to have been included in the process. Nevertheless, there are avenues for resolution of such disputes within the Canadian legal system. Moreover, Manitoba Hydro and the Government of Manitoba has entered into impact management agreements with virtually all affected aboriginal interests to specifically address issues related to both past and new projects. These agreements, as well, have adjudicative mechanisms contained within them for the resolution of disputes among the parties.

We would suggest that your Committee may want to very carefully consider whether or not Wisconsin regulatory bodies or courts wish to become a further venue for the airing of disputes which already have the benefit of extremely robust Canadian processes.

We hope you and the members of your committee will find this letter helpful in your deliberations on this Bill.

Yours truly,

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Senior Vice-President
Power Supply

KRFA/dn

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Representative Kevin Petersen
Representative Gary Tauchen
Representative Thomas Larson
Representative Erik Severson
Representative Chad Weininger
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